

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-12-2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.10148 of 1999

1.K.C.Ponnusamy (died)

2.K.P.Hariparanthaman

3.K.P.Murali Krishnan

(Petitioners 2 and 3 substituted

in the place of the deceased 1st

petitioner as per order, dated 30.3.07,

by SRJ in WPMP 29874/05 in

W.P.No.10148/99)

.. Petitioners.

Versus

1.The Secretary,
The Government of Tamil Nadu
Adidraavidar Welfare Department,
Fort St.George, Chennai-600 009.

2.The District Collector,
Vellore District, Vellore.

3.Special Tahsildar,
Land Acquisition, Adhidraavidar Welfare
Vellore District.

.. Respondents.

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for a writ of Certiorari, to call for the records on the file of the 3rd respondent in RCA.No.2427/98, order dated 9.4.99 in respect of dry lands in (1) S.No.269/2 measuring 0.01.5 (2) S.No.270/1B measuring 0.11.5(3) S.No.282/A measuring 0085 situated at Ganga Nallure village, Vellore Taluk and Vellore District and quash the same.

For petitioner : Mr.C.R.Dasaradhan

For respondent : Mr.V.Manoharan
Government Advocate

O R D E R

Heard Mr.C.R.Dasaradhan, the learned counsel appearing for the petitioner and Mr.V.Manoharan, the learned Government Advocate appearing for the respondents.

2. It is stated by the petitioner that he is the owner of 0.01.5

Hectares of land in Survey No.269/2, 0.11.5 Hectares in S.No.270/18, 0.08.5 Hectares in S.No.282/A, situate at Ganganallur Village, Vellore Taluk, Vellore District. The petitioner is residing in one portion of the lands and in the remaining area there are standing coconut trees. The yield from the coconut trees and the groundnut crops cultivated in the lands are the only source of income for his family consisting of nine members. While so, on the instigation of Chinnaraju and Chinnakolanthai of Ganganallur, who were interested in purchasing the lands, the third respondent had initiated land acquisition proceedings stating that it was being done to provide free hostel accommodation to Adidraavidar School Students of Anaicut block. The third respondent had issued notice, dated 2.11.1998, under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, (Tamil Nadu Act 31 of 1978) calling for objections, if any. After the petitioner had submitted his objections, the third respondent had conducted an enquiry, dated 14.12.1998. During the course of the enquiry the petitioner had stated that the acquisition proceedings were motivated and that the lands in question are under the personal occupation of the petitioner and his family and that they are residing in it.

3. It was also stated that other suitable lands were available at Anaicut, where the schools were located. Even though the third respondent ought to have passed orders, under Section 4(3)(a) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, (Tamil Nadu Act 31 of 1978) after the enquiry was conducted with regard to the objections, under Section 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, (Tamil Nadu Act 31 of 1978), the third respondent had not done so. Instead the third respondent had issued a notice, under Section 12(2) of the Land Acquisition Act, 1894, which is arbitrary, illegal and without jurisdiction. Therefore, the petitioner has preferred the present writ petition, challenging the proceedings of the third respondent, dated 9.4.99, by way of invoking Article 226 of the Constitution of India.

4. In the counter affidavit filed on behalf of the respondents, it has been stated that the existing Adi Dravidar students hostel is functioning in a private building at Ganganallur Village on a monthly rental basis. In order to avoid expenditure towards payment of rent, the Government of Tamil Nadu had formulated schemes to construct Government hostel buildings. Hence, the lands belonging to the petitioners were selected for acquisition to construct free hostel building for Adi Dravidar students, by invoking the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, (Tamil Nadu Act 31 of 1978). Therefore, the notice under Form I, under Section 4(2) of the Tamilnadu Act 31 of 1978 was issued to the land owner in R.C.A.No.2427/98, dated 13.11.1998, through registered post with acknowledgement due. The petitioner had received the notice, on 23.11.1998. Thereafter, the petitioner had appeared during the enquiry conducted on 01.12.1998. Since the land owner had not submitted his objection, necessary proposals were sent to the District Collector, Vellore, Vellore District, to accord sanction to publish the

notification, under Section 4(1) of the Tamilnadu Act 31 of 1978. The Collector had accorded sanction in his proceedings K.(11) 83022/98, dated 28.01.1999. The above notification was also published in the District Gazette No.6, dated 16.2.99. The notification was published in the locality, on 20.2.1999. The value of the land was fixed with reference to the sale statistics and other relevant data relating to other lands in the locality. The pre-valuation statement was approved by the Collector in his proceedings K.(11) 83022/98, dated 22.3.99. The award enquiry notice in Form No.III, under Section 5(1) of the Tamilnadu Act 31 of 1978 was issued to the land owner in proceedings Rc.A.No.2427/98, dated 9.3.1999. The land owner's son had received the notice, on 18.3.1999 and appeared for the enquiry on 25.3.1999. Thereafter, the award was passed in Award No.25/98-99, dated 26.3.1999.

5. It has been further stated that the petitioner had submitted his objections, on 27.3.99, with the request not to acquire the land in question. Notice in Form No.2(2) was also issued to the petitioner in Rc.A.2427/98, dated 9.4.1999. Though the petitioner had received the notice he had not turned up to receive the amount to be paid as compensation.

6. It has also been stated in the counter affidavit filed on behalf of the respondents that the petitioner is residing at Katturnthur village, which is 15 kms away from Ganganallur Village. The petitioner and his family is not residing at Ganganallur village. Only 9 coconut trees were available in the acquired portion of the lands and the coconut trees are not yielding as they are aged. Only dry crops like groundnut are cultivated in the lands acquired from the petitioner. The petitioner is having more than 5 acres of land in Katturnthur village. He is not depending upon the lands for his livelihood as claimed by him.

7. It is also submitted that the lands in question are acquired for construction of free hostel buildings to avoid huge expenditure being paid as rent. Notice in Form I under Section 4(2) of The Land Acquisition Act 31 of 1978, had been issued to the petitioner, on 2.11.1998. The petitioner had not submitted his objection, on 14.12.1998, as stated by him. The alternate lands said to be available in Kangapuram and other villages, for the construction of hostel buildings, are actually situated at a distance of four or five kilometres from Ganganallur Village. The petitioner had neither submitted his objection before the Land Acquisition Officer, nor signed the statement recorded at the time of enquiry, on 01.12.1998. After the approval of the pre-valuation statement from the Collector the necessary award enquiry notice, under Form No.III was issued to the petitioner vide proceedings in RcA.2427/98, dated 9.3.99. The petitioner had appeared for the award enquiry on 25.3.1999. He had refused to sign the statement recorded by the Land Acquisition Officer at the time of the award enquiry on 25.3.1999. The award was passed in Award No.25/98-99, dated 26.3.99. The petitioner had not submitted any objection petition before the passing of the award. He had also

submitted the objection petition, dated 26.03.1999 only on 27.3.1999, after the award had been passed on 26.03.1999. In such circumstances, the writ petition is liable to be dismissed as devoid of merits.

8. The learned counsel appearing on behalf of the respondents had submitted that once the award is passed, it is not open to the petitioner to file a writ petition, challenging the same as held by the First Bench of this Court reported in Ramalingam and three others Vs. The State of Tamil Nadu rep. by the Secretary to the Industries Department, Fort St. George, Chennai-600 009 and two others (2005-2-L.W. 693). Further, the petitioner had not submitted his objection before the Land Acquisition Officer, nor signed the statement recorded at the time of the enquiry. Eventhough he had appeared for the enquiry held on 25.03.1999, the award had been passed on 26.03.1999 and the petitioner had submitted the objection petition, dated 26.03.1999, only on 27.3.1999, after the passing of the award.

9. The learned counsel appearing on behalf of the petitioner had not refuted the said contentions raised on behalf of the respondents.

10. Based on the submissions made on behalf of the parties concerned and on a perusal of the records available, it is clear that the petitioner had come before this Court by filing the present writ petition, invoking Article 226 of the Constitution of India, only on 11.6.1999, challenging the award passed on 26.03.1999. In such circumstances, without going into the merits of the case, this Court is of the considered view that the decision of the Division Bench of this Court reported in Ramalingam and three others Vs. The State of Tamil Nadu rep. by the Secretary to the Industries Department, Fort St. George, Chennai-600 009 and two others (2005-2-L.W. 693), is applicable to the present case.

11. In such circumstances, the writ petition stands dismissed. However, it is made clear that it is open to the petitioner to take appropriate proceedings in the manner known to law, with regard to the compensation said to be due to him, along with the other benefits accrued thereon. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Secretary,
The Government of Tamil Nadu
Adidraavidar Welfare Department,
Fort St.George, Chennai-600 009.

2.The District Collector,
Vellore District, Vellore.

3.The Special Tahsildar,
Land Acquisition, Adhidraavidar Welfare
Vellore District.

+1cc to Mr.C.R.Dhasarathan,Advocate Sr 72946

KG(CO)
km/23.1.



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